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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 593 (PGG)

5 DOUGLAS McLARTY, BRIAN
6 RICHARDS,

7 Defendants.
8 -----x

9 New York, N.Y.
10 August 31, 2015
11 2:40 p.m.

12 Before:

13 HON. PAUL G. GARDEPHE,

14 District Judge

15 APPEARANCES

16 PREET BHARARA,
17 United States Attorney for the
18 Southern District of New York
19 MICAH SMITH
20 Assistant United States Attorney

21 PATRICK A.H. WATTS
22 Attorney for Defendant McLarty

23 JOSEPH D. NOHAVICKA
24 Attorney for Defendant Richards

25 ALSO PRESENT: JOHN MOSCATO, Pretrial Services Officer

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(In open court)

(Case called)

MR. SMITH: Good afternoon, your Honor. Micah Smith for the government. With me at counsel table is Pretrial Services Officer John Moscato.

MR. WATTS: Good afternoon, your Honor. My name is Patrick Watts, and I represent Mr. Douglas McLarty.

THE COURT: How are you, sir.

MR. NOHAVICKA: Good afternoon. Joseph Nohavicka for defendant Brian Richards. We are ready.

THE COURT: All right. I understand the defendants have to be arraigned. So will they please rise, Mr. McLarty and Mr. Richards.

Mr. McLarty, you're here with Mr. Watts as your attorney this afternoon; is that correct?

DEFENDANT McLARTY: Yes.

THE COURT: And, Mr. Richards, you're here with Mr. Nohavicka -- am I pronouncing it right?

MR. NOHAVICKA: It's Nohavicka. That's all right, your Honor.

DEFENDANT RICHARDS: Yes, your Honor.

THE COURT: I should tell both of you -- well, first of all, I should find out whether you received a copy of the indictment. Mr. McLarty, have you received a copy of the indictment?

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1 DEFENDANT McLARTY: Yes.

2 THE COURT: Mr. Richards, have you received a copy of
3 the indictment?

4 DEFENDANT RICHARDS: No.

5 THE COURT: All right. Will somebody give
6 Mr. Richards a copy of the indictment?

7 MR. SMITH: Yes. Yes, your Honor.

8 THE COURT: You can be seated, both of you.

9 (Pause)

10 All right. I'm going to read the indictment to both
11 of you now. Count One, the grand jury charges on or about
12 June 20th, 2014, in the Southern District of New York, Douglas
13 McLarty, also known as "Q Don," and Brian Richards, also known
14 as "B Rich," the defendants, and others known and unknown,
15 willfully and knowingly did combine, conspire, confederate and
16 agree together, and with each other, to commit an offense
17 against the United States, to wit, to violate Title 18, United
18 States Code, Section 922(g)(1).

19 It was a part and an object of the conspiracy that
20 Douglas McLarty, also known as "Q Don," the defendant, having
21 previously been convicted in a court of a crime punishable by
22 imprisonment for a term exceeding one year, to wit, attempted
23 murder in the second degree in violation of New York Penal Law
24 sections 110 and 125.25, would and did possess a firearm, to
25 wit, a black .45 caliber pistol, manufactured by Hi-Point,

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1 model JHP, which previously had been shipped and transported in
2 interstate commerce.

3 In furtherance of the conspiracy and to effect the
4 illegal object thereof, the following overt act, among others,
5 was committed in the Southern District of New York:

6 On or about June 20th, 2014, Douglas McLarty, also
7 known as "Q Don," handed the Hi-Point pistol to Brian Richards,
8 also known as "B Rich," in the vicinity of East 216th Street
9 and White Plains Road in the Bronx, New York.

10 Count Two. The grand jury further charges on or about
11 June 20, 2014, in the Southern District of New York, Douglas
12 McLarty, also known as "Q Don," and Brian Richards, also known
13 as "B Rich," the defendants, knowingly possessed a firearm that
14 moved in and affected interstate commerce, to wit, the Hi-Point
15 pistol, at places that McLarty and Richards knew, and had
16 reasonable cause to believe, were school zones within the
17 meaning of Title 18, United States Code, Section 921(a)(25)(B),
18 namely, at places within 1,000 feet of a private kindergarten
19 and elementary school located at 719 East 216th Street, Bronx,
20 New York, and within a thousand feet of a public middle school
21 located at 3710 Barnes Avenue, Bronx, New York.

22 Count Three. The grand jury further charges on or
23 about June 20, 2014, in the Southern District of New York,
24 Douglas McLarty, also known as "Q Don," the defendant, after
25 having been previously convicted in a court of a crime

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1 punishable by imprisonment for a term exceeding one year, to
2 wit, Attempted Murder in the Second Degree, in violation of
3 New York Penal Law sections 110 and 125.25, knowingly did
4 possess a firearm that moved in and affected commerce, to wit,
5 the Hi-Point pistol.

6 All right. Mr. McLarty, have you had an opportunity
7 to discuss these charges with your attorney?

8 DEFENDANT McLARTY: Yes.

9 THE COURT: And, Mr. Richards, have you had an
10 opportunity to discuss these charges with your attorney?

11 DEFENDANT RICHARDS: Yes, your Honor.

12 THE COURT: All right. Then I'm going to ask you now
13 how you plead as to each count. Mr. McLarty, with respect to
14 Count One, how do you plead, guilty or not guilty?

15 DEFENDANT McLARTY: Not guilty.

16 THE COURT: Mr. Richards, with respect to Count One,
17 how do you plead, guilty or not guilty?

18 DEFENDANT RICHARDS: Not guilty.

19 THE COURT: As to Count Two, Mr. McLarty, how do you
20 plead, guilty or not guilty?

21 DEFENDANT McLARTY: Not guilty.

22 THE COURT: Mr. Richards, as to Count Two, how do you
23 plead, guilty or not guilty?

24 DEFENDANT RICHARDS: Not guilty.

25 THE COURT: And, Mr. McLarty, with respect to Count

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1 Three, how do you plead, guilty or not guilty?

2 DEFENDANT McLARTY: Not guilty.

3 THE COURT: All right. Mr. Smith, could you give me a
4 sense of the discovery materials that you'll be providing in
5 the case?

6 MR. SMITH: Yes, your Honor. Today, before this
7 proceeding began, I provided counsel for both defendants with a
8 compact disk that contain our initial production of rule 16
9 discovery that included not just the charging instruments but
10 also surveillance video taken from the June 2014 shooting, as
11 well as some other documents relating both to the firearm and
12 to other facts relevant to the circumstances surrounding that
13 shooting.

14 There will be, I believe, a few additional
15 surveillance videos that we'll be producing, some other
16 documents relating to the firearm, and a few other documents,
17 for example, relating to criminal history which my agents are
18 both compiling for both defendants.

19 So we're not finished producing rule 16 discovery, but
20 I do believe a sufficient amount of rule 16 discovery has been
21 produced that both defense counsel will be able to use the time
22 between today and when we next appear before your Honor to
23 review that discovery and have a sense of what motions, if any,
24 counsel wish to file.

25 THE COURT: Now, there's a post-arrest statement that

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1 Mr. McLarty made, right?

2 MR. SMITH: Yes, your Honor, there is a post-arrest
3 statement that Mr. McLarty made that was recorded, and I have
4 also produced a copy of that post-arrest statement to counsel.

5 THE COURT: All right. I haven't heard that.

6 Mr. Watts, how long do you need in order to determine
7 whether there will be motion practice?

8 MR. WATTS: Your Honor, I would ask for a month.

9 THE COURT: All right. Does that work for you, too,
10 Mr. Nohavicka?

11 MR. NOHAVICKA: Yes, it does.

12 THE COURT: Mr. Ruocco, could you give us a date about
13 30 days out.

14 THE DEPUTY CLERK: Yes, your Honor. Thursday,
15 October 1st, at 2:30 in the afternoon is available.

16 THE COURT: Is that available for everybody,
17 October 1st at 2:30?

18 MR. NOHAVICKA: By Defendant Richards, yes, your
19 Honor.

20 MR. WATTS: That's fine.

21 MR. SMITH: And the government.

22 THE COURT: Does the government wish me to exclude
23 time between now and then?

24 MR. SMITH: Yes, your Honor.

25 THE COURT: Any objection, Mr. Watts?

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1 MR. WATTS: No, your Honor.

2 THE COURT: Mr. Nohavicka?

3 MR. NOHAVICKA: No, objection, your Honor.

4 THE COURT: Then I will exclude the time between today
5 and October 1st, 2015, under the Speedy Trial Act pursuant to
6 Title 18, United States Code, Section 3161(h)(7)(A), to permit
7 defense counsel to review the discovery materials from the
8 government and determine whether there will be any pretrial
9 motions. I do find that the ends of justice served by the
10 granting of this continuance outweigh the best interests of the
11 public and the defendants in a speedy trial.

12 Now, Mr. Nohavicka, I was told before coming down that
13 you wish to make a bail application for Mr. Richards?

14 MR. NOHAVICKA: That is correct, your Honor.

15 THE COURT: Are you prepared to proceed now?

16 MR. NOHAVICKA: I am, but before I did that, I just
17 wanted to make one comment on the appearances. I believe we
18 have a court appearance within the next few days, if that
19 appearance could just be adjourned to the October 1st.

20 THE COURT: What do we have on the calendar in the
21 next few days?

22 MR. SMITH: I think that may be a reference to the
23 preliminary hearing date, your Honor.

24 THE COURT: Yes. Mr. Nohavicka, the next appearance
25 in the case will be October 1st.

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MR. NOHAVICKA: Thank you, your Honor. May I proceed?

THE COURT: Please.

MR. NOHAVICKA: Thank you, your Honor. If it please the Court, I do have a pretrial services report that was handed to me just before this proceeding began and, you know, I do note that on the last page of the report it indicates, well, that bail is contraindicated in this situation.

I realize that under 18, U.S.C., 3142(g) that we're permitted an opportunity to provide evidence that -- or some kind of proof that bail would be indicated, and I believe in this situation that I have can produce some things. The first thing I'd like to talk about is that Mr. Richards has lived at the same address in the Bronx, not far from where I live, for his entire life. He has his family there. His mother lives there. He has a child there, two years of age, in addition to the mother of the child who he's been with for the past five years.

He has a very strong support group of familial -- he has an older brother, two older sisters, all college graduates who hail from the Bronx as well. The brother lives in Troy, the sister lives in Florida, but they've been very supportive throughout this. As your Honor knows, this case has been going on since June of 2014. It's been litigated in the State court, and we have what's called the Osborne Group, which is an organization in New York that's funded by the City that assists

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1 attorneys with providing information on indigent or
2 near-indigent defendants with respect to their candidacy for
3 various programs that are alternatives to incarceration, and in
4 this case, an alternative to detention.

5 We were before Justice Iacovetta in Supreme Bronx and
6 there was very strong indication that he was going to go --
7 that he was going to allow us to do that, at least for the
8 time, you know, up until the time of trial. I did have the --
9 initially when he was arrested in the Bronx, his bail was -- I
10 believe it was 150 over 75,000, and we had it reduced down to
11 \$50,000 dollars under Justice Leak.

12 Unfortunately, that amount is way out of the ballpark
13 for Mr. Richards' family, and in the event that the Court
14 determines that the detention is appropriate, whether it be
15 released on his own recognizance is contraindicated, that we
16 get a more reasonable bail amount. So the amount, if I could
17 just suggest it without offending the Court or the prosecution,
18 an amount of \$10,000, if the Court deems it inappropriate to
19 release him on his own recognizance.

20 And I would like -- I did serve a copy of the
21 pre-pleading memorandum prepared by the Osborne Group for
22 Justice Iacovetta to the prosecution, if I could hand it up and
23 file it electronically with the Court at this time, I would
24 like to do that very much.

25 THE COURT: Yes, you can hand it up.

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1 MR. NOHAVICKA: You'll see very quickly that the
2 pre-pleading memorandum prepared by the Osborne Group is
3 antithetically opposed and diametrically opposed to the report
4 that was prepared, with all due respect, to the services
5 provided by the Federal Court. They just haven't had the time
6 to conduct the investigation that the Osborne Group has
7 conducted.

8 They spoke with the mother. They spoke with the
9 girlfriend, the mother of the child. They spoke with the
10 defendant himself. It's a very, very comprehensive
11 investigation that was done. You'll also see attached to the
12 memorandum is a letter from the brother just attesting to his
13 brother's candidacy for this kind of program.

14 In addition to the program called CASES, which is the
15 last document attached, showing that Mr. Richards qualified for
16 this out-of-court program, and as I said, even if it's during
17 the pending of the -- from now until the trial itself, and they
18 have very stringent reporting requirements and they keep a
19 close watch on him, in addition to the fact that the defendant
20 is 21 years old, doesn't have anywhere to go outside of
21 New York on his own.

22 It would appear to be a very strong indication that
23 bail should not be required, or if bail is set, that it be a
24 very, very small. As I said, in this situation, he could never
25 afford and his family could never afford anywhere near the

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1 \$50,000.

2 THE COURT: All right. Does the government wish to be
3 heard?

4 MR. SMITH: Yes, your Honor, just briefly. As your
5 Honor knows from the complaint in this case, the offenses with
6 which Mr. Richards has been charged involved -- or the facts
7 underlying those offenses involved a shooting on June 20th,
8 2014, within the 47th Precinct of the Bronx. During that
9 shooting, as surveillance video from multiple angles show,
10 defendant Douglas McLarty fired approximately four shots at
11 another individual or group of individuals on the other side of
12 the street.

13 As a result of that shooting, a 16-year-old victim,
14 who was walking nearby, suffered graze wounds and was taken to
15 the hospital. Relevant specifically to Mr. Richards, what the
16 surveillance shows is that Mr. Richards was there with
17 Mr. McLarty, and that as soon as Mr. McLarty fires those shots,
18 the surveillance video shows McLarty and Richards running
19 together. McLarty hands the gun to Richards, and Mr. Richards
20 attempts to flee from the police.

21 A couple of things about the fleeing. While the video
22 show him holding his gun in the right hand, holding it at the
23 actual handle of the right and running down the road with the
24 gun in his right hand, he actually runs past a couple of
25 individuals at a bodega with the gun brandished in his hand as

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1 he runs from the police, who arrived in a marked vehicle with
2 the lights flashing.

3 The complaint also indicates that at least one
4 cooperating witness has identified both Mr. Richards and
5 Mr. McLarty as members of a street gang that operates, among
6 other places, in that very area. And so it is particularly
7 troubling, I think, under the circumstances, that this is a
8 shooting that involved two fellow members of a gang and that a
9 16-year-old victim was harmed as a result.

10 The complaint also indicates that this is a shooting
11 that occurred less than half a block away from a kindergarten,
12 and there's a middle school just on the other side of the
13 block, highlighting even more the seriousness of this offense.

14 Just a few things about Mr. Richards himself. I found
15 it actually telling that defense counsel said nothing about the
16 circumstances of the crime, which are very serious, and I think
17 those circumstances themselves very strongly weigh toward
18 detention in this case.

19 More broadly, just a couple of things about
20 background. Defense counsel referred to State proceedings.
21 Just so your Honor is aware, both defendants had been detained
22 by the State, as I believe Mr. Richards' counsel acknowledged.
23 When the government decided to charge both of these individuals
24 by complaint, we arranged to have the State prosecutor agree to
25 the release of the defendants on the day that they appeared in

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1 court so that they could be taken into federal custody. The
2 alternative being to put in a writ that would then have the
3 marshals bring them down here, which could have taken a little
4 more time.

5 So, in other words, these are two defendants that were
6 in State custody and were detained pending the resolution of
7 that State case. And as your Honor was told, and as I believe
8 is correct, bail for Mr. Richards himself had initially been
9 set at \$150,000 with a requirement of \$75,000 of cash.
10 Mr. Nohavicka mentioned that it had been reduced to \$50,000 at
11 one point as a security requirement. I didn't see that on the
12 document, though -- on the docket sheet for the State case;
13 though, I don't have any reason to believe that that's not
14 true.

15 In any event, that was a bail determination made
16 taking into consideration just risk of flight, as I understand
17 is what the State standards are, and given the seriousness of
18 the offense here, I think pretrial services has it right, that
19 there are no circumstances that would support pretrial release.

20 I do think it's also telling that in the pretrial
21 report there's a reference to at least a couple of prior cases
22 where Mr. Richards was placed -- on at least in one case --
23 probation, eventually a bench warrant had to be issued. This
24 is in connection with the 2011 robbery arrest that Mr. Richards
25 has. It's the first arrest listed on Page 4 of the pretrial

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1 services report. And Mr. Richards was adjudicated a youthful
2 offender, presumably based on some of the similar kinds of
3 arguments that defense counsel has made here about his youth
4 and about his family support, and then less than a
5 year-and-a-half later, a bench warrant was issued, probation
6 was revoked, and the defendant, having previously been given
7 probation, was resentenced to 45 days on the same charge.

8 A bench warrant was also issued in 2012 in connection
9 with the petit larceny and criminal possession that
10 Mr. Richards was arrested for in White Plains, and there's also
11 false impersonation charge. So given both the seriousness of
12 the conduct in this case, the indications that one sees in the
13 history of interactions with law enforcement that the pretrial
14 services office details, and the fact that even in the State
15 Mr. Richards had been previously detained subject to the very
16 high security of \$50,000, I agree with the pretrial services
17 office that there's no condition or set of conditions that
18 would adequately protect the safety of the community and ensure
19 the defendant's appearance in court in connection with this
20 case.

21 The only other thing, briefly, is the pretrial
22 services report does indicate that the defendant not only has
23 extended family in various other locations and countries, but
24 also that the defendant himself has traveled to those places as
25 well. So while it is true that the defendant has been a

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1 life-long resident of the Bronx, this is not a situation in
2 which the defendant is someone who's never traveled away from
3 this area before. So for all of those reasons, the government
4 believes that detention is appropriate.

5 THE COURT: All right. Is there anything that
6 pretrial services officer wishes to say?

7 MR. MOSCATO: No, I have nothing to add.

8 MR. NOHAVICKA: May I respond to that, your Honor?

9 THE COURT: Yes, please.

10 MR. NOHAVICKA: Thank you so much. Just as far as the
11 incident takes place near a school, this happened in the
12 summertime, and it happened at about 11:20, 11:30 in the
13 evening. There were no school children that were exposed. I
14 understand the statute doesn't mention anything temporally but,
15 you know, the statute was meant to protect a certain group of
16 people. That group of people are nonexistent, are not going to
17 be anywhere near it. Then it turns the statute on its head if
18 you're going to use it to enhance something that he is already
19 charged with.

20 With respect to the robbery up in White Plains, that
21 was a shoplifting charge, your Honor. So, I mean, if we're
22 talking about safety to the community, there's a big difference
23 between, you know, stealing a can of beans and hitting somebody
24 over the head with a can of beans, you know, if that's the
25 distinction that the government is making in this case.

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1 And, also, I just would like to add that we do have
2 family members here on behalf of Mr. Richards, in the event
3 that the Court determines that bail is appropriate and the
4 Court secures his release, that he has somebody to go to
5 immediately.

6 And having said that, I just want to reiterate the
7 effect is that I meant no offense to the pretrial services.
8 They're very important, and I respect their work very much, but
9 I do have -- and I submitted to the Court a more comprehensive
10 study that was done on the defendant, and if pretrial services
11 under the Federal Court had the time, I have no doubt they
12 would have come to the same conclusion. Thank you, your Honor.

13 THE COURT: All right. Under Title 18, United States
14 Code, Section 3142(g), I'm directed to consider the following
15 factors in determining whether pretrial release is appropriate.
16 First, the nature and circumstances of the offense charged,
17 including whether the offense is a crime of violence or
18 involves a firearm; the weight of the evidence against the
19 defendant; the defendant's history and characteristics
20 including his character, physical and mental condition, family
21 ties, employment, financial resources, length of residence in
22 the community, community ties, past conduct, history relating
23 to drug or alcohol abuse, criminal history and record
24 concerning appearance at court proceedings; also, whether at
25 the time of the current offense the defendant was on probation,

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1 on parole or on other release pending trial, sentencing, appeal
2 or completion of sentence for an offense under federal, state
3 or local law; and, finally, the nature and seriousness of the
4 danger to any person in the community that would be posed by
5 the defendant's release.

6 The pretrial services office has concluded that there
7 are no conditions or combination of conditions that will
8 reasonably assure the appearance of the defendant as required
9 and the safety of the community. Accordingly, the pretrial
10 services office recommends that Mr. Richards be detained
11 pending trial.

12 Beginning with the nature and circumstances of the
13 offense, Mr. Richards was arrested by the NYPD on June 20th,
14 2014; however, he was brought into federal custody on
15 July 20th, 2015, and was charged with conspiring to commit a
16 felon-in-possession offense, in violation of 18, United States
17 Code, Section 371; also, a violation of 18, United States Code,
18 Section 922(q)(2)(A), which relates to knowingly possession of
19 a firearm within a thousand feet of a school.

20 The complaint indicates that between 11:00 p.m. and
21 midnight on June 20th, 2014, an altercation took place in the
22 area of East 216th Street and White Plains Road in the Bronx.
23 Five shots were fired. The government's theory is that
24 defendant McLarty fired the weapon and then gave the firearm to
25 Richards. Richards was chased by the police and disposed of

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1 the weapon, a .45 caliber pistol, shortly before his arrest.
2 The police recovered the pistol, however.

3 The complaint goes on to allege that McLarty and
4 Richards are part of a gang that operates in the neighborhood
5 and that Richards would have known that McLarty was a felon.

6 Given that Mr. Richards is charged with possessing a
7 firearm that was involved in a recent shooting, this case
8 presents the issue of danger to the community. Based on what
9 has been submitted to me, I conclude that the weight of the
10 evidence on the possession count appears strong. According to
11 the government, both testimony from a police officer and a
12 surveillance video demonstrate that Mr. Richards took the
13 firearm from Mr. McLarty.

14 Given Mr. Richards' lifelong residence in the
15 neighborhood and the number of prior arrests in the
16 neighborhood, it is reasonable to infer that he was aware of
17 the schools in the neighborhood.

18 The weight of the evidence on the conspiracy count is
19 not as clear. It's not apparent to me how the government will
20 prove that Richards and McLarty entered into a conspiracy to
21 have McLarty possess the gun, nor is it clear how the
22 government will prove that Mr. Richards knew that Mr. McLarty
23 was a felon. The government has an informant who will say that
24 the two belong to the same gang, and the government also
25 intends to argue that because McLarty was on parole from his

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1 attempted murder conviction and was wearing a GPS monitoring
2 device on his ankle, Richards must have been aware of McLarty's
3 prior felon conviction. In any event, based on the evidence
4 currently before me, I cannot find that evidence on the
5 conspiracy count is particularly strong.

6 With respect to Mr. Richards' personal history and
7 characteristics, he has lived in the Bronx at his mother's
8 apartment for his entire life of 21 years. The defendant has,
9 in addition to his mother, other ties with the community,
10 including a girlfriend, a daughter and a sister. He has
11 siblings also in Troy, New York, and in Florida, and he has
12 extended family outside this country, including in Canada,
13 Barbados and Grenada.

14 As to employment, the defendant was unemployed at the
15 time of his arrest. He has worked briefly as a counselor at a
16 church and at McDonald's. He has no financial assets and is
17 financially supported by his mother, who I understand to be a
18 nurse at Bronx Lebanon Hospital.

19 The defendant reported that he occasionally used
20 alcohol and had used marijuana on a daily basis from the age of
21 16 until about a year ago.

22 As to criminal record, the defendant has two youthful
23 offender convictions for petit larceny, both misdemeanors. The
24 first was in 2011, the second in 2013. He received a sentence
25 of three years' probation on the 2011 conviction and six

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1 months' incarceration on the 2013 case. Mr. Richards had bench
2 warrants issued in both cases. His probation in the 2011 case
3 was revoked based on his 2013 conviction.

4 In February of 2013, Mr. Richards was convicted of
5 false impersonation, another misdemeanor. He was sentenced to
6 time served.

7 As to whether or not the legal standards here have
8 been met as to detention, the standard for finding that a
9 defendant poses a danger to the community is clear and
10 convincing evidence. I conclude that the government has not
11 met that standard here.

12 While there's evidence that Richards took the firearm
13 from McLarty after McLarty had fired a number of shots, there's
14 no evidence that Richards ever fired the weapon, knew that
15 McLarty intended to fire the weapon or that Richards had ever
16 used the weapon in the past. His criminal record does not
17 involve any crimes of violence. He has three misdemeanor
18 convictions for petit larceny and false impersonation.

19 While the government has proffered that an informant
20 will testify that Richards and McLarty belong to a gang, this
21 does not constitute clear and convincing evidence that Richards
22 is a danger to the community. Moreover, it is not clear to me
23 that the altercation here had anything to do with a gang. The
24 victim says that she overheard a dispute about a phone. Based
25 on this record, I cannot find that the government has

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1 demonstrated that there are no conditions that will ensure the
2 safety of the community if Mr. Richards is released on bail.

3 With respect to risk of flight, determinations
4 regarding risk of flight are governed by a preponderance of the
5 evidence standard. The defendant has been a lifelong member of
6 the community. He's lived with his mother that entire time,
7 that is to say, 21 years. He has other close relationships in
8 the community, including his girlfriend, sister and daughter.
9 There are reasons for concern about risk of flight, however.

10 Mr. Richards has three prior convictions. He's had
11 two bench warrants issued in the past. He's violated probation
12 in the past, and he is facing a significant sentence if
13 convicted on the charges against him. And, as I noted, the
14 evidence on the possession count appears strong to me.
15 Mr. Richards is also unemployed and has no assets, and he has
16 contacts outside of the country.

17 While I believe that a stringent bail package is
18 called for, I find that the government has not met its burden
19 of demonstrating by a preponderance of the evidence that there
20 are no conditions or combination of conditions that will ensure
21 Mr. Richards' return to court.

22 Accordingly, Mr. Richards will be released on the
23 following conditions: a \$250,000 personal recognizance bond,
24 cosigned by three financially responsible people and secured by
25 \$10,000 in cash; home detention enforced by electronic

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1 monitoring. Mr. Richards will live with his mother at 730 East
2 232nd Street, Apartment 5C, in the Bronx. Also, strict
3 pretrial supervision, surrender of any travel documents, travel
4 restricted to the Southern District of New York. All
5 conditions are to be satisfied prior to release.

6 Is there anything else?

7 MR. SMITH: Nothing else from the government, your
8 Honor.

9 MR. NOHAVICKA: Nothing by defendant Richards, your
10 Honor.

11 MR. WATTS: Nothing, your Honor.

12 (Adjourned)